



THOMAS J. MILLER  
ATTORNEY GENERAL

## Department of Justice

ADDRESS REPLY TO:  
ENVIRONMENTAL AND FARM DIVISIONS  
LUCAS STATE OFFICE BUILDING  
321 E 12TH, GROUND LEVEL, ROOM 018  
DES MOINES, IOWA 50319  
PHONE: (515) 281-5351  
FAX: (515) 242-6072

January 4, 2005

**SENT VIA FAX TRANSMISSION AND REGULAR U.S. MAIL**

Mr. Robert L. Cramer, President  
FAREWAY STORES, INC.  
2300 East 8<sup>th</sup> Street  
P.O. Box 70  
Boone, IA 50036-0070

RE: Violations of Iowa Code chapter 455C

Dear Mr. Cramer:

It has come to our attention that numerous Fareway grocery stores are refusing to accept beverage containers and pay refunds even though there is no applicable order from the Iowa Department of Natural Resources (IDNR) approving an alternative redemption center. This constitutes continuing violations of Iowa Code sections 455C.2(1) and 455C.3(1). The law requires Fareway to accept beverage containers and pay the refund to customers until there is an approved alternative redemption center.

We understand that the IDNR's previous attempts to obtain voluntary compliance with these requirements have been unsuccessful. Additional copies of IDNR Letter from Jon C. Tack to Robert L. Cramer, dated November 8, 2004; and IDNR Memorandum to Grocers and Redemption Center Operators, dated November 16, 2004, are enclosed for your convenience. In addition, on November 29, 2004, IDNR Program Planner Jeff Geerts spoke with Fareway Vice-President Fred Greiner concerning these requirements and e-mailed to Mr. Greiner a copy of the November 16 memorandum, a sample Redemption Center Registration and Approval Form, and a checklist for redemption centers of the information required to obtain approval. Despite these IDNR efforts, Fareway's violations are continuing.

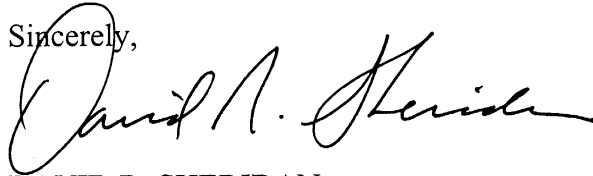
The purpose of this letter is to request that Fareway grocery stores immediately cease refusing to accept and pay refunds on beverage containers for redemption where there is no applicable IDNR order approving an alternative redemption center. Please confirm by providing my office with a copy of a Fareway corporate directive to all Fareway grocery stores requiring each store to immediately comply and to post notice to its customers that beverage containers will be accepted and refunds will be paid until an alternative redemption center is approved.

Mr. Robert L. Cramer  
January 4, 2005  
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This letter is an attempt to obtain voluntary compliance with the law short of litigation. We urge you to refer this matter to your legal counsel for review. If you or your attorney would like to discuss this matter, please contact me no later than January 14, 2005. If Fareway is not in compliance as of January 14, we are prepared to file suit seeking injunctive relief.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Sheridan". The signature is fluid and cursive, with a large initial "D" and "S".

DAVID R. SHERIDAN  
Assistant Attorney General  
Environmental Law Division  
Phone: (515) 281-5351  
Fax: (515) 242-6072  
E-mail: dsherid@ag.state.ia.us

DRS/cj  
Enclosures  
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# STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR  
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES  
JEFFREY R. VONK, DIRECTOR

November 8, 2004

ROBERT L. CRAMER  
PRESIDENT  
FAREWAY STORES INC  
PO BOX 70  
2300 E 8<sup>TH</sup> STREET  
BOONE IA 50036-0070

Dear Mr. Cramer:

As we discussed today, the department has been informed that some Fareway Stores in southwestern and south central Iowa wish to transfer to redemption centers their duty to accept and redeem empty beverage containers. This is an acceptable practice, but there are certain procedures which must be completed in order to stop accepting the containers.

Section 455C.4(2) of the Code of Iowa allows a dealer to "refuse to accept and to pay the refund value of any empty beverage container if the place of business of the dealer and the kind and brand of empty beverage containers are included in an order of the department approving a redemption center under section 455C.6." Section 455C.6 sets out the procedure for a redemption center to become an approved redemption center. The department is to approve a redemption center if we find that the redemption center provides a convenient service to consumers for the return of empty beverage containers. Section 455C.6(3) requires, in part, that "The order of the department approving a redemption center shall state the dealers to be served by the redemption center and the kind and brand names of the empty beverage containers which the redemption center must accept."

The department has adopted Chapter 567-107 of the Iowa Administrative Code to more fully state the requirements of the Bottle Bill. The requirements for an approved redemption center are found at 567 IAC 107.4(1). Two items may be particularly relevant to this situation. Please note that subrule 107.4(1)"d" establishes a procedure for a previously approved redemption center to add additional stores. To the extent that Fareway intends to use redemption centers which have been previously approved, this provision would apply. Please also note that subrule 107.4(1)"h" requires that an approved redemption center accept all beverage containers of the kinds, sizes, and brand names sold by the dealer. This means that store brand containers would need to be accepted by any redemption center acting as a substitute for a Fareway store.

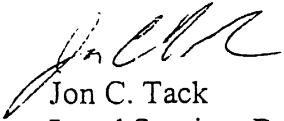
WALLACE STATE OFFICE BUILDING / 502 EAST 9th STREET / DES MOINES, IOWA 50319  
515-281-5918 TDD 515-242-5967 FAX 515-281-6794 [www.iowadnr.com](http://www.iowadnr.com)

EXHIBIT "A"

I would like to reiterate that the department does not have a problem with the concept that an approved redemption center will take the place of a dealer for the purposes of the redemption of empty beverage containers. This is allowed by law. I am writing only to ensure that the required approval procedures are completed prior to the date on which any individual Fareway store stops accepting empty beverage containers. If a redemption center has not been approved by the department to act as a substitute for a particular dealer, that dealer may not refuse to accept and redeem those containers.

I have enclosed copies of the most relevant sections of the statute and rules. If you have any questions, please contact me at 515-281-8889.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon C. Tack", written over the printed name.

Jon C. Tack  
Legal Services Bureau  
Iowa Department of Natural Resources

imbursed by the distributor required to accept the empty beverage containers an amount which is one cent per container. A dealer, dealer agent, or person operating a redemption center may compact empty metal beverage containers with the approval of the distributor required to accept the containers.

[C79, 81, §455C.2]

87 Acts, ch 22, §13; 88 Acts, ch 1200, §2; 89 Acts, ch 272, §35, 42; 90 Acts, ch 1261, §43, 44; 91 Acts, ch 268, §434, 442, 443; 92 Acts, ch 1242, §34, 38, 39, 40, 47

#### 455C.3 Payment of refund value.

Except as provided in section 455C.4:

1. A dealer shall not refuse to accept from a consumer any empty beverage container of the kind, size and brand sold by the dealer, or refuse to pay to the consumer the refund value of a beverage container as provided under section 455C.2.

2. A distributor shall accept and pick up from a dealer served by the distributor or a redemption center for a dealer served by the distributor at least weekly, or when the distributor delivers the beverage product if deliveries are less frequent than weekly, any empty beverage container of the kind, size and brand sold by the distributor, and shall pay to the dealer or person operating a redemption center the refund value of a beverage container and the reimbursement as provided under section 455C.2 within one week following pickup of the containers or when the dealer or redemption center normally pays the distributor for the deposit on beverage products purchased from the distributor if less frequent than weekly. A distributor or employee or agent of a distributor is not in violation of this subsection if a redemption center is closed when the distributor attempts to make a regular delivery or a regular pickup of empty beverage containers. This subsection does not apply to a distributor selling alcoholic liquor to the alcoholic beverages division of the department of commerce.

3. A distributor shall not be required to pay to a manufacturer a deposit or refund value on a non-refillable beverage container.

4. A distributor shall accept from a dealer agent any empty beverage container of the kind, size, and brand sold by the distributor and which was picked up by the dealer agent from a dealer within the geographic territory served by the distributor and the distributor shall pay the dealer agent the refund value of the empty beverage container and the reimbursement as provided in section 455C.2.

5. The alcoholic beverages division of the department of commerce shall provide for the disposal of empty beverage containers as required under subsection 2. The division shall give priority consideration to the recycling of the empty beverage containers to the extent possible, before any other

appropriate disposal method is considered or implemented.

[C79, 81, §455C.3]

83 Acts, ch 84, §1; 88 Acts, ch 1200, §3; 89 Acts, ch 272, §36, 42; 90 Acts, ch 1261, §43, 44; 91 Acts, ch 268, §442, 443; 92 Acts, ch 1242, §35, 38, 39, 40, 47

#### 455C.4 Refusal to accept containers.

1. Except as provided in section 455C.5, subsection 3, a dealer, a person operating a redemption center, a distributor or a manufacturer may refuse to accept any empty beverage container which does not have stated on it a refund value as provided under section 455C.2.

2. A dealer may refuse to accept and to pay the refund value of any empty beverage container if the place of business of the dealer and the kind and brand of empty beverage containers are included in an order of the department approving a redemption center under section 455C.6.

3. A dealer or a distributor may refuse to accept and to pay the refund value of an empty wine or alcoholic liquor container which is marked to indicate that it was sold by a state liquor store. The alcoholic beverages division shall not reimburse a dealer or a distributor the refund value on an empty wine or alcoholic liquor container which is marked to indicate that the container was sold by a state liquor store.

4. A class "E" liquor control licensee may refuse to accept and to pay the refund value on an empty alcoholic liquor container from a dealer or a redemption center or from a person acting on behalf of or who has received empty alcoholic liquor containers from a dealer or a redemption center.

5. A manufacturer or distributor may refuse to accept and to pay the refund value and reimbursement as provided in section 455C.2 on any empty beverage container that was picked up by a dealer agent from a dealer outside the geographic territory served by the manufacturer or distributor.

[C79, 81, §455C.4]

85 Acts, ch 32, §112; 87 Acts, ch 22, §14, 15; 88 Acts, ch 1200, §4; 89 Acts, ch 161, §9

#### 455C.5 Refund value stated on container — exceptions.

1. Each beverage container sold or offered for sale in this state by a dealer shall clearly indicate by embossing or by a stamp, label or other method securely affixed to the container, the refund value of the container. The department shall specify, by rule, the minimum size of the refund value indication on the beverage containers.

2. A person, except a distributor, shall not import into this state after July 1, 1979 a beverage container which does not have securely affixed to the container the refund value indication. The provisions of this subsection do not apply if:

a. For beverage containers containing alcoholic liquor as defined in section 123.3, subsection 5,

the total capacity of the containers is not more than one quart or, in the case of alcoholic liquor personally obtained outside the United States, one gallon.

b. For beverage containers containing beer as defined in section 123.3, subsection 7, the total capacity of the containers is not more than two hundred eighty-eight fluid ounces.

c. For all other beverage containers, the total capacity of the containers is not more than five hundred seventy-six fluid ounces.

3. The provisions of subsections 1 and 2 of this section do not apply to a refillable glass beverage container which has a brand name permanently marked on it and which has a refund value of not less than five cents, to any other refillable beverage container which has a refund value of not less than five cents and which is exempted by the director under rules adopted by the commission, or to a beverage container sold aboard a commercial airliner or passenger train for consumption on the premises.

[C79, 81, §455C.5]

85 Acts, ch 32, §113; 87 Acts, ch 22, §16

#### 455C.6 Redemption centers.

1. To facilitate the return of empty beverage containers and to serve dealers of beverages, any person may establish a redemption center, subject to the approval of the department, at which consumers may return empty beverage containers and receive payment of the refund value of such beverage containers.

2. An application for approval of a redemption center shall be filed with the department. The application shall state the name and address of the person responsible for the establishment and operation of the redemption center, the kind and brand names of the beverage containers which will be accepted at the redemption center, and the names and addresses of the dealers to be served by the redemption center. The application shall contain such other information as the director may reasonably require.

3. The department shall approve a redemption center if it finds that the redemption center will provide a convenient service to consumers for the return of empty beverage containers. The order of the department approving a redemption center shall state the dealers to be served by the redemption center and the kind and brand names of empty beverage containers which the redemption center must accept. The order may contain such other provisions to insure that the redemption center will provide a convenient service to the public as the director may determine.

4. The department may review the approval of any redemption center at any time. After written notice to the person responsible for the establishment and operation of the redemption center, and to the dealers served by the redemption center, the

commission may, after hearing, withdraw approval of a redemption center if the commission finds there has not been compliance with the department's order approving the redemption center, or if the redemption center no longer provides a convenient service to the public.

5. All approved redemption centers shall meet applicable health standards.

[C79, 81, §455C.6]

#### 455C.7 Unapproved redemption centers.

Any person may establish a redemption center which has not been approved by the department, at which a consumer may return empty beverage containers and receive payment of the refund value of the beverage containers. The establishment of an unapproved redemption center shall not relieve any dealer from the responsibility of redeeming any empty beverage containers of the kind and brand sold by the dealer.

[C79, 81, §455C.7]

#### 455C.8 Snap-top cans prohibited.

A person shall not sell or offer for sale at retail in this state any metal beverage container so designed and constructed that a part of the container is detachable in opening the container.

[C79, 81, §455C.8]

#### 455C.9 Rules adopted.

The commission shall adopt, upon recommendation of the director, the rules necessary to carry out the provisions of this chapter, subject to the provisions of chapter 17A.

[C79, 81, §455C.9]

#### 455C.10 Appeal.

Any person aggrieved by an order of the department relating to the approval or withdrawal of approval for a redemption center may seek judicial review of such order as provided in chapter 17A.

[C79, 81, §455C.10]

#### 455C.11 Annual appropriation. Repealed by 87 Acts, ch 22, § 17.

#### 455C.12 Penalties.

1. Any person violating the provisions of section 455C.2, 455C.3, 455C.5, and 455C.8, or a rule adopted under this chapter shall be guilty of a simple misdemeanor.

2. A distributor who collects or attempts to collect a refund value on an empty beverage container when the distributor has paid the refund value on the container to a dealer, redemption center, or consumer is guilty of a fraudulent practice.

3. Any person who does any of the following acts is guilty of a fraudulent practice:

a. Collects or attempts to collect the refund value on the container a second time, with the knowledge that the refund value has once been

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107.3(6) An example of the label or labeled container may, but need not, be submitted to the department for informal approval.

107.3(7) An application for exemption from the requirement of having the words "Iowa Refund 5¢" or "IA 5¢" indicated on the container shall be on Form LQ 37 or on 8½" × 11" paper and shall contain:

- The name, address and telephone number of the applicant;
- The refund value of the container; and
- A statement of why the container can be readily and permanently identified by consumers as subject to a deposit.

107.3(8) An example of the container for which the exemption is being requested shall be sent to the department along with the application required in 107.3(7).

107.3(9) The department may exempt the container if the department determines that the container is subject to a deposit of 5 or more cents and that consumers can readily and permanently identify the container as one subject to a deposit.

567—107.4(455C) Redemption centers. The Act provides for both approved and unapproved redemption centers. Both approved and unapproved redemption centers redeem empty beverage containers and pay the refund value to consumers. Additionally, the Act recognizes "a redemption center for a dealer." Unapproved redemption centers in existence on May 22, 2002, and served by distributors on a voluntary basis may formalize the status quo by registering with the department pursuant to 107.4(4).

107.4(1) Approved redemption centers.

- Any person may file with the department an application for approval of a redemption center.
- An application for approval of a redemption center shall be submitted on Form LQ38 or on 8½" × 11" paper and shall contain the following information:
  - Name, address and telephone number of the redemption center;
  - Name, address and telephone number of the person or persons responsible for the establishment and operation of the redemption center;
  - Indication that the redemption center will accept all kinds, sizes, and brand names of beverage containers sold by the dealers served by the redemption center;
  - Names and addresses of the dealers to be served by the redemption center and the written consent of those dealers to be served by the redemption center;
  - Distance, in blocks or other appropriate measure, from the redemption center to each dealer to be served by the redemption center;
  - Names and addresses of the distributors whose beverage containers will be redeemed;
  - Hours during which the redemption center is to be open;
  - Whether metal, glass or plastic beverage containers will be crushed or broken and, if so, the written consent of the distributor or manufacturer to the crushing or breaking;
  - Reasons why the redemption center and the dealers to be served by it believe that the redemption center will provide a convenient service to consumers.
- A redemption center shall be approved as a redemption center for a dealer if the department determines that the redemption center will provide a convenient service to the dealer's customers. The department order that approves the redemption center shall name the dealers to be served by the redemption center.
- An approved redemption center may file with the department a supplemental application to serve additional dealers. The supplemental application shall be in the form and contain the information required by paragraph "b." If the department finds that the redemption center will provide a convenient service to the customers of those additional dealers which the redemption center proposes to serve, the department shall supplement its order approving the redemption center to name the additional dealers.

e. A dealer named in the supplemental order shall be an exempt dealer.

f. The department may at its discretion exempt a dealer from the requirement of the Act if the dealer is in violation of the Act above criteria or is no longer permitted to operate.

g. A dealer may withdraw from the redemption center for the dealer. A dealer which has withdrawn from the redemption center as a redemption center shall be subject to the provisions of the Act.

h. An approved redemption center shall accept all beverage containers that bear the refund value for which it is an approved redemption center.

i. An approved redemption center shall accept all beverage containers at least 20¢ and 10 p.m. or on Saturday or Sunday.

j. When an approved redemption center receives notice that includes the redemption center's approval, the redemption center shall no longer be subject to the provisions of the Act.

107.4(2) Unapproved redemption centers. A redemption center shall not be established without the approval of the department. Before commencing operations, the redemption center shall file with the department:

- Name, address and telephone number of the redemption center;
- Name, address and telephone number of the person or persons responsible for the establishment and operation of the redemption center;
- Operating hours of the redemption center;
- When the redemption center is to be open.

f. The redemption center shall include the redemption center's approval.

107.4(3) Redemption center approval.

a. A redemption center that is not an approved redemption center shall file an application for certification as a redemption center.

b. An application for certification shall be filed with the department on 8½" × 11" paper and shall contain the following information:

- Name, address and telephone number of the redemption center;
- Name, address and telephone number of the person or persons responsible for the establishment and operation of the redemption center;
- Names and addresses of the distributors whose beverage containers will be redeemed;
- Names and addresses of the dealers to be served by the redemption center and the written consent of those dealers to be served by the redemption center;
- Whether metal, glass or plastic beverage containers will be crushed or broken and, if so, the written consent of the distributor or manufacturer to the crushing or breaking;
- Reasons why the redemption center and the dealers to be served by it believe that the redemption center will provide a convenient service to consumers.

c. A redemption center which is not an approved redemption center shall file an application for certification as a redemption center.

d. A dealer for which the redemption center is approved shall be an exempt dealer.

e. A dealer named in the department order that approves a redemption center or named in a supplemental order shall be an exempt dealer.

f. The department may at any time rescind the order approving a redemption center or terminate the exemption of a dealer if the department determines, after notice and hearing, that the redemption center is in violation of the Act or this chapter or that the redemption center is no longer meeting the above criteria or is no longer providing a convenient service to a dealer's customers.

g. A dealer may withdraw its consent to be served by a redemption center which is approved as a redemption center for the dealer by filing with the department written notice of withdrawal of consent. A dealer which has withdrawn its consent is no longer an exempt dealer, and the approval of its redemption center as a redemption center for the dealer is thereby terminated.

h. An approved redemption center shall accept from consumers and shall pay the refund value for all beverage containers that bear an Iowa refund value and are of the kinds, sizes and brand names sold by the dealers for which it is an approved redemption center.

i. An approved redemption center shall be in operation and open to the public for redemption of beverage containers at least 20 hours per week, 4 hours of which shall be between the hours of 6 p.m. and 10 p.m. or on Saturday or Sunday, or a combination thereof.

j. When an approved redemption center is closing permanently, it shall give to the department notice that includes the redemption center's final date of operation. As of the final date of operation, the redemption center's approval as a redemption center shall be terminated and a dealer it was approved to serve shall no longer be an exempt dealer.

107.4(2) Unapproved redemption centers. Nothing in the Act or this chapter prevents a person from establishing a redemption center that has not been approved by, certified by, or registered with the department. Before commencing operations, unapproved redemption centers shall provide the following to the department:

- a. Name, address and telephone number of the redemption center;
- b. Name, address and telephone number of the person or persons responsible for the establishment and operation of the redemption center; and
- c. Operating hours of the redemption center.

When the redemption center is closing permanently, it shall give to the department notice that includes the redemption center's final date of operation.

107.4(3) Redemption center for a dealer.

a. A redemption center that proposes to provide beverage container sorting or handling services for a dealer but that is not an approved redemption center for the dealer may file with the department an application for certification as a redemption center for the dealer.

b. An application for certification as a redemption center for a dealer shall be on a form provided by the department on 8½" x 11" paper and shall contain the following information:

- (1) Name, address and telephone number of the redemption center;
- (2) Name, address and telephone number of the person or persons responsible for the establishment or operation of the redemption center;
- (3) Names and addresses of the dealers for whom the redemption center is to provide beverage container sorting or handling services, the services to be provided to each dealer and the written consents of those dealers to be served by the redemption center;
- (4) Names and addresses of the distributors for which the redemption center will provide beverage container sorting or handling services;
- (5) Whether metal, glass or plastic beverage containers will be crushed or broken and, if so, the written consent of the distributor or manufacturer to the crushing or breaking.

c. A redemption center which meets the above criteria shall be certified as a redemption center for that dealer.

d. A dealer for which the redemption center is certified is not an exempt dealer.





# STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR  
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES  
JEFFREY R. VONK, DIRECTOR

## MEMORANDUM

**To:** Grocers and Redemption Center Operators  
**From:** Jeff Geerts, Iowa Department of Natural Resources  
**Date:** November 16, 2004  
**Re:** Designating a Redemption Center as an Approved Redemption Center

The Department of Natural Resources has received several inquiries in the last week regarding the operating designation of redemption centers across Iowa. In addition, the department has received several questions regarding how does a dealer (grocery store) designate a redemption center as the approved center for that grocery store so the store no longer has to accept deposit beverage containers. Due to the large number of inquiries received, the department is taking this opportunity to provide clarification on these issues.

The current operating designation of a redemption center, whether it is operating as a redemption center for a dealer, an unapproved redemption center or an approved redemption center for another grocer does not matter. For a grocery store to no longer accept containers the department must approve the individual agreement between the store and the redemption center to confirm that consumers will still have convenient access to container redemption services. The approved redemption center process is described in Iowa Administrative Code chapter 107.4(1). Here is the process for a grocery store to request approval of an agreement with a redemption center so the grocery store no longer has to accept deposit beverage containers.

1. The grocery store sends in writing a request to a local redemption center asking that the redemption center become an approved center for the store so that the store no longer has to accept beverage containers. A store may request to have more than one approved center.
2. The redemption center sends to the Department of Natural Resources a copy of the grocery stores request from step 1 above plus the information described in the attached Approved Redemption Center Registration Checklist.
3. Once the department determines that all of the necessary information has been submitted and has determined the agreement will provide convenient access for consumers to redeem deposit containers, the department will issue a certificate for posting to both the redemption center and the grocery store.

If you have any questions, please call me at 515-281-8176 or e-mail at [jeff.geerts@dnr.state.ia.us](mailto:jeff.geerts@dnr.state.ia.us) or call Theresa Stiner at 515-281-8646 or e-mail Theresa at [theresa.stiner@dnr.state.ia.us](mailto:theresa.stiner@dnr.state.ia.us).  
Thank you.

WALLACE STATE OFFICE BUILDING / 502 EAST 9th STREET / DES MOINES, IOWA 50319  
515-281-5918 TDD 515-242-5967 FAX 515-281-6794 [www.iowadnr.com](http://www.iowadnr.com)

EXHIBIT "B"